

Minutes of the regular meeting of the Zoning Board of **Appeals** of the Village of Irvington, held in the Board of Trustees Hearing Room on March 9, 1993.

MEMBERS PRESENT: Chairman Lustenberger  
Lewis Herman  
Robert Bronnes  
Thomas M. **Rothman**  
Robert Myers

ALTERNATE Frank Gilligan  
MEMBERS PRESENT: George Rowe

ALTERNATE  
MEMBERS ABSENT: Bruce Clark

VILLAGE OFFICIALS PRESENT: Eugene **Hughey**, Building Inspector

The meeting was convened by Chairman Lustenberger at precisely 8:00 P.M. The Chairman moved to approve the Minutes from the February meeting as submitted by the Secretary, which motion was seconded and unanimously approved and the Minutes were so approved.

The first matter heard was the adjourned Application of James Caterino. Chairman Lustenberger stated that he and the other Board Members had received and reviewed the March 2nd memorandum of law from Jeffrey Shumejda. After some discussion the Chairman, speaking on behalf of the Board, stated that, while the Board does not agree with Judge Colabella's decision in the Matter of **Pateman**, the Board believes that on principals of res judicatta the Board is bound by that decision and, given that counsel to Mr. Caterino has admitted that the Board's findings of fact in the **Patemen** Application **are** fully applicable to the Caterino application (see letter of February 24, 1993 from Jeffrey S. Shumejda, Esq. to the Zoning Board) the Board had no alternative but to approve the Application. The Chairman also made it clear that since the granting of the Application would be based upon Judge **Colabella's** decision, if Judge **Colabella's** decision was reversed by a subsequent Court the granting of the variance by the Board would be reconsidered. Mr Shumejda stated that he understood this condition and his Client would accept the risks **associated** with reversal. The Chairman then moved to grant the Application based upon principals of res judicatta which motion **was** seconded and unanimously approved.

The second and final matter heard was the adjourned Application of S. Howard Padwee. Mr. Steinmetz appeared on behalf of Mr. Padwee and stated that Mr. Padwee was unavailable for this meeting. Mr. Steinmetz introduced Paul Lynch, as engineer for Mr. Padwee. The Chairman recognized Eric Koster who stated that he had recently been retained by Mr. and Mrs. Henderickson as their new Counsel in this matter and he introduced Larry Nardecchia, engineer for the Henderickson's.

The Chairman stated that this Application had been previously adjourned, among other reasons, to allow the parties to present engineering data and opinions with respect to the question of whether the improvements previously constructed by Mr. Padwee are as equally useful in an IF 40 zone subdivision as in an IF 20 zone subdivision.

Mr. Steinmetz began by stating that he had not received the brief and engineering materials from Mr. Koster until 12:00 noon that day. After some discussion the Chairman apologized to Mr. Steinmetz for this late submittal. The Chairman stated that he had directed the Village Clerk to make a copy of the submission available to Mr. Steinmetz but the Village Clerk had been under the belief that the extra copy delivered to him was a file copy. Accordingly, Mr. Steinmetz's copy of Mr. Koster's submission had stayed in the Village Clerk's office until delivered at 12:00 noon that day, when Mr. Steinmetz called. The Chairman asked Mr. Steinmetz if he needed an adjournment due to this oversight and Mr. Steinmetz stated he would proceed. Mr. Steinmetz then discussed what he stated are the relevant facts and cases and his engineer presented his analysis of the improvements with respect to the question. Mr. Koster then presented his analysis of what he believes are the relevant facts and cases and his engineer presented his engineering analysis.

Mr Koster submitted a letter from Dr. Hussin Amin, a neighbor of the property, to which was attached copies of a deed containing a restrictive covenant prohibiting the subdivision of the property. Mr. Steinmetz addressed that issue by stating that such restrictive covenant was released in the 1960's. Mr. Koster stated that such release had only been executed by one grantor and had not been executed by the successors in interest to the property and was **therefor** invalid and that the subdivision was invalid. A discussion then ensued concerning whether this restrictive covenant, if not properly released, constitutes a fatal defect in the subdivision proceedings thereby mooting the Application. The Chairman stated that it would not be possible for the Board to **thoroughly** analyze this new issue at this meeting and requested submissions of legal memoranda on this point. The **Chairman** also asked that a further memorandum be prepared concerning the legal issue of recoupment, as proffered by Mr. Koster. The matter was then adjourned.

The Board then stated that the next meeting would be scheduled for April 20th\* and directed that all memoranda be delivered no later than April 13th.\* The meeting was then adjourned at 11:15 P.M.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T.M. Rothman', with a long horizontal flourish extending to the right.

Thomas M. Rothman  
Secretary

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\*The meeting was subsequently rescheduled to April 27th with the due date for submission extended to April 20th.